

Chapter 11
APPLICATION REVIEW, COMPLAINTS,
AND
HEARING PROCEDURES

Section 1. Application Review Process.

(a) Upon receipt of a completed application, the Board Office shall review the application and if it is complete and, if there is no known grounds for denial of the license requested, issue the license. If there are known grounds for denial, the Board Office shall forward the application to the Application Review Committee (ARC).

(b) The ARC shall review the application and all other information available and following the review may:

(i) Approve the application if the applicant meets all requirements; or

(ii) If there are questions as to whether denial is appropriate, forward the application and an ARC report to the Assistant Attorney General assigned to the Board for prosecution to review.

(c) If, after review, the ARC and Assistant Attorney General recommend denial of an application:

(i) A preliminary denial letter shall be sent to applicant. The letter shall:

(A) State basis for the denial including relevant statutes and rules; and

(B) Advise the applicant of the right to request reconsideration.

(ii) If the applicant fails to request reconsideration in writing within thirty (30) days of the date of the preliminary denial letter, the preliminary denial becomes final.

(iii) If the applicant requests reconsideration within thirty (30) days, a reconsideration conference shall be held with the ARC, the Assistant Attorney General, and the applicant.

(iv) Following a reconsideration conference, the ARC shall either approve or deny the application.

(v) If denied, the applicant must submit a written request for a hearing within thirty (30) days of the date of the denial letter.

(d) Application denial hearing.

(i) An application denial hearing is a formal contested case hearing conducted pursuant to the Wyoming Administrative Procedure Act.

(ii) The hearing is to be conducted in the presence of a quorum of the Board, with a hearing officer presiding.

(iii) The applicant has the burden of proving that he/she meets all requirements for the license requested.

Section 2. Complaints.

(a) A disciplinary action is initiated against a license holder by submitting a written complaint to the Board office. A complaint concerning an alleged violation of the Act or Board Rules may be submitted by any person or entity, a Board member, or a Board staff member. The written complaint should provide as much of the following information as may be available and applicable:

- (i) The name and address of the complainant;
- (ii) The name, address, place of employment, and telephone number of the license holder against whom the charges are made;
- (iii) The specific conduct alleged to constitute the violation;
- (iv) The name and address of any other witnesses; and
- (v) The signature of the complainant.

Section 3. Review of Written Complaint.

(a) Written complaints shall be referred to an Investigative Board Member (IBM) selected by Board staff from a rotating schedule. License holders against whom charges are made will be advised of the investigation, the name of the IBM, and the nature of the complaint.

- (i) The IBM shall not take part in the consideration of any contested case.
- (ii) The IBM shall not, by this rule, be barred from attending any disciplinary hearing.

Section 4. Investigations and Board Action. The IBM and Board staff shall investigate those written complaints received which merit further investigation.

(a) Upon completion of the investigation, an investigative report shall be prepared.

- (i) The report shall include:
 - (A) The findings;
 - (B) A list of statutes and/or Board rules believed to have been violated; and
 - (C) Any relevant additional information.

(b) The IBM shall review the investigative report, forward the report and his/her recommendations to the Assistant Attorney General assigned to the Board for prosecution, and consult with the Assistant Attorney General.

(c) Following consultation with the Assistant Attorney General, the IBM may:

- (i) Send the notice required by Section 5;
 - (ii) Prepare and file a formal petition and notice of hearing setting the matter for a contested case hearing before the Board;
 - (iii) Recommend the Board accept an offer of conditional terms for settlement, which may include educational courses;
 - (iv) Recommend the Board dismiss the complaint.
- (d) The Board may resolve a complaint at any time by:
- (i) Accepting a voluntary surrender of a license;
 - (ii) Accepting conditional terms for settlement;
 - (iii) Dismissal

Section 5. Service of Notice and Opportunity to Show Compliance. Prior to commencement of a formal hearing, the IBM shall give notice by mail to the license holder of the facts or conduct which warrants his/her intended action. The notice shall give the license holder an opportunity to show compliance with all lawful requirements for retention of the license within twenty (20) days of the mailing of the notice. Such notice shall be sent to the license holder's last known address both by certified mail with return receipt requested and by first class mail.

Section 6. Formal Hearing Procedures.

(a) A formal proceedings for a hearing before the Board regarding action against a license holder shall be commenced by petition and notice of hearing, served in person, or by both certified mail and first class mail sent to the address last known by the Board at least thirty (30) days prior to the date set for the hearing. The petition and notice shall contain at least:

- (i) The name and address of the license holder;
- (ii) A statement, in ordinary and concise language, of the nature of the complaint filed with the Board, the facts upon which the complaint is based, as well as the specific statute(s) or Board rules and regulations alleged to have been violated;
- (iii) The time, place, and nature of the hearing;
- (iv) That the hearing is being held pursuant to the authority provided by W.S.33-12-135; and

(v) The license holder shall file an Answer or Notice of Appearance, which must be received by the Board at least ten (10) working days prior to the date set for hearing, or the license holder, will be in default.

Section 7. Continuance. For good cause shown, extensions and continuance may be granted or denied at the discretion of the Board or the hearing officer.

Section 8. Default. The Board may enter an order based on the allegations in a petition in any case where the applicant or license holder has not answered or appeared in writing ten (10) working days before the hearing, or in any case in which the applicant or license holder or his/her representative has not appeared at a scheduled hearing for which they had notice.

Section 9. Hearing Officer. The Board may appoint a hearing officer to take evidence at the hearing, or the chairperson or a Board member may serve as the hearing officer.

Section 10. Discovery. In all formal proceedings before the Board, discovery shall be afforded in accordance with the Wyoming Administrative Procedure Act.

Section 11. Subpoenas.

(a) A Board member or the hearing officer may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall have the power to administer oaths.

(b) Service of a subpoena must be made at the expense of the party applying for it and shall be made in the manner provided by law for service for subpoenas in civil actions.

Section 12. Witnesses.

(a) All persons testifying at any hearing before the Board shall be administered a standard oath or affirmation.

(b) No testimony will be received from a witness except under oath or affirmation.

(c) The party calling a witness shall bear the costs associated with his/her appearance.

(d) The Board and hearing officer shall have an opportunity to examine any witness.

Section 13. Representation.

(a) A license holder may represent him/herself or be represented by counsel, provided that such counsel is licensed to practice law in the State of Wyoming or is associated at the hearing with one or more attorneys licensed to practice law in the State of Wyoming.

(b) In any case before the Board, an appearance in person or the filing of an answer or other pleading shall constitute an appearance of record by an attorney.

(c) A request for withdrawal from representation by an attorney shall be submitted to the Board in writing.

(d) The Assistant Attorney General assigned to the Board for prosecution shall present all matters in a contested case on behalf of the IBM.

Section 14. Prehearing Conference.

(a) The hearing officer may direct the parties to appear before him/her to consider:

(i) The simplification of the issues;

(ii) The necessity or desirability of amending the pleadings;

(iii) The possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;

(iv) Formulating procedures to govern the hearing; or

(v) Such other matters as may aid in the disposition of the case.

(b) Prehearing conferences shall be conducted informally. An order will be prepared which recite the actions taken at the conference, amendments allowed, agreements of the parties, and the issues to be determined at the hearing.

Section 15. Order of Procedure at Hearing. The hearing will be conducted in substantially the following order:

(a) Opening announcements are made by the hearing officer, including case name and docket number, the issue(s) to be considered, parties and counsel present, and subpoenas issued.

(b) Witnesses should be identified and sworn;

(c) Opening statements may be made at the discretion of the hearing officer. In cases of license denial, the applicant should go first. In disciplinary cases the IBM should go first;

(d) Presentation of evidence. The order above will be followed with each party, the hearing officer, and the Board having the opportunity to cross-examine the witnesses. Rebuttal evidence may be presented;

(e) Exhibits offered in evidence by the applicant or the license holder will be marked with the letters of the alphabet. Those offered by the IBM will be marked numerically;

(f) Closing arguments may be made at the discretion of the hearing officer. Time may be limited, the order of presentation is as above, and brief rebuttal time may be allowed. The hearing and the evidence are then closed, unless reopened by the hearing officer for good cause shown.

Section 16. Decisions.

(a) Proposed Decisions:

(i) At the discretion and direction of the Board, the parties may file proposed findings of fact, conclusions of law, and order after the hearing and before the deadline announced in the hearing's closing announcements.

(ii) At the discretion and direction of the Board, the hearing officer shall prepare proposed findings of fact, conclusions of law, and order.

(b) Final Decisions. Proposed decisions will be given consideration but are not binding upon the Board. All final decisions will be issued by the Board and shall be based exclusively upon the evidence in the record and matters officially noticed. All final decisions issued by the Board shall be served to all parties by first class mail sent to their last known address.

Section 17. Appeals. A Petition for Judicial Review of the Board decision may be filed in the district court in accordance with the Wyoming Rules of Appellate Procedure.

Section 18. Transcripts. If a Petition for Judicial Review is filed in the district court, the petitioner shall either arrange the preparation and pay for the transcript of the testimony, or reimburse the Board for the cost of the transcript if previously prepared at Board expense.